

**From:** Mark Hammer  
**To:** Microsoft ATR  
**Date:** 1/23/02 1:44pm  
**Subject:** Comment on Microsoft Judgement

To whom it may concern:

This is likely to be one of the more far-reaching cases in recent memory.

I am not a lawyer. "I don't know a Habis from a Corpus," the old movie line says. However I think I know justice, and this settlement just does not feel like justice. It fails the duck test. "If it looks like a duck..."

There are several things that concern me with the proposed settlement. The first being Microsoft's past behavior.

Have they shown any inclination to respect the rule of law, except where it benefits them? Have you forgotten the arrogance they showed in Judge Jackson's courtroom? The arrogance that caused even that conservative, pro-business Reagan appointee to roll his eyes in disbelief? Have you forgotten the doctored video evidence? How about Bill Gates' taped testimony?

Have they shown any inclination in the past to honor "Gentlemen's Agreements" when it was to their advantage not to? What happened to the original agreement between Microsoft and the DOJ? What has happened to countless companies large and small that Microsoft has cajoled down the garden path, then turned and ruthlessly stabbed in the back?

So what has changed? What causes the DOJ to think that Microsoft will now honor the spirit as well as the letter of your settlement? Is it just "a scrap of paper", as Churchill said about another agreement with a ruthless predator.

I am also concerned about the principle that no one is above the law. What will happen if Microsoft gets off with a wrist slap and is free to go on their merry way, especially in light of the Enron mess? What will the perception be?

At the very least, Microsoft should be forced to release to the public the programming interfaces and the data formats of all their software. This includes data packets and files. AT&T was required to provide access to their system to their competitors. Microsoft should be required to do the same.

The pre-package agreements with the OEMs are used by Microsoft to restrain trade and maintain their monopoly. A simple solution is to require Microsoft to buy back at published retail prices any software the end-user does not want that comes bundled with a computer. This must be made the responsibility of Microsoft, not the OEMs. They must not be able to duck it. This solution has the simple elegance of solving the core problem, without major upheaval.

Remember, the DOJ won, Microsoft lost. If the Government of the United States has to go down this path again, it will be a lot harder next time. That "scrap of paper" eventually led to World War II.

Sincerely,

Mark B. Hammer

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